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H. F. SPANIOLO, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1986

PLUMBERS AND STEAMFITTERS UNION LOCAL 598
DONALD LANE, LARRY J. SALTZ, BUDDY D.
WRIGHT, PEDRO A. NICACIO, III, ROY A.
SALTZ, and ALLEN DETRICK,

Petitioners,

v.

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
WASHINGTON STATE COURT OF APPEALS,
DIVISION III

SUPPLEMENTAL BRIEF OF PETITIONERS

* HUGH HAFFER
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ARGUMENT*

THE DECISION BELOW IS IN CONFLICT WITH THIS COURT'S RECENT DECISION IN *BROCK V. ROADWAY EXPRESS*.

In *Brock v. Roadway Express, Inc.*, 55 U.S.L.W. 4530 (U.S. April 22, 1987), this Court considered an employer's claim that it had been deprived of a property interest without due process of law. The employer had been ordered to reinstate an employee under §405 of the Surface Transportation Assistance Act (49 U.S.C. App. §2305). No evidentiary hearing had been held prior to the issuance of this order. *Id.* at 4531. The employer asserted that it had a constitutionally protected property interest and that the procedures followed under §405 deprived it of that interest without due process of law. *Id.* at 4532. The employer claimed that its property interest derived "from the collective bargaining agreement between [the employer] and its employees' union. It is the right to discharge an employee for cause." *Id.* at 4532. The Secretary of Labor conceded that the employer had a constitutionally protected property interest and this Court accepted the Secretary's concession. *Id.* at 4532 n. 2.

Like the employer in *Roadway*, the Petitioners in the instant case have a constitutionally protected property right which "derives from the collective bargaining agreement" between the employer, Bechtel, and Petitioners' union. Here, as in *Roadway*, the expectancy of employment arose under an employment contract which provided that the employees may only be discharged for "just cause". (Ex. 62, Art. IV(1)).

* This brief is submitted pursuant to Rule 22.6.

Since the *Roadway* facts evidenced governmental interference with a protected property interest, this Court was required to determine "what process is due." *Id.* at 4532. The Court balanced "the Government's interest in imposing the temporary deprivation, the private interests of those affected by the deprivation, the risk of erroneous deprivations through the challenged procedures, and the probable value of additional or substitute procedural safeguards." *Id.* at 4532.

The opinion notes that the "constitutional requirements of a meaningful opportunity to respond before a temporary deprivation may take effect entails, at a minimum, the right to be informed not only of the nature of the charges but also of the substance of the relevant supporting evidence." *Id.* at 4533. Failure to provide this information resulted in an "unacceptable risk of erroneous decisions." *Id.* at 4533.

In the case at bar, Petitioners were notified by letter that they were in violation of unnamed Security System regulations. The letter did not notify them of any relevant supporting evidence. Indeed, the witnesses on whose testimony the allegations were based remained anonymous throughout this process. Although Petitioners were allowed to submit written statements of mitigating circumstances, without knowledge of the relevant supporting evidence against them, any attempt by Petitioners to respond was meaningless. Petitioners were not given an opportunity to meet with the investigators, nor were they allowed to present statements from rebuttal witnesses.

Petitioners, here, assert precisely the same interest implicated in *Roadway*; namely, employment tenure under a "just cause" clause in a labor contract. As in *Roadway*, Petitioners were deprived of their property interest without an opportunity to "respond at a

meaningful time and in a meaningful manner.” *Id.* at 4534. The decision below is in conflict with *Roadway*; hence, certiorari should be granted.

Respectfully Submitted,

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